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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) P3233D1	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>09/22/2005</u> Signature <u>Mark A. Boys</u>		Application Number 09/387,616	Filed 08/31/1999
Typed or printed name <u>Mark A. Boys</u>		First Named Inventor Dan Kikinis	Art Unit 2642
		Examiner Thjuan P. Knowlin	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the		<u>Donald R. Boys</u> Signature	
<input type="checkbox"/> applicant/inventor.		<u>Donald R. Boys</u> Typed or printed name	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)			
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>35074</u>		<u>831-726-1457</u> Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>09/22/2005</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Art Unit 2642      Examiner Thjuan P. Knowlin

In Re:      Dan Kikinis et al.  
Case:      P3233D1  
Serial No.: 09/387,616  
Filed:      August 31, 1999  
Subject:      Method and Apparatus for Providing an Interactive Home Agent with  
                  Access to Call Center Functionality and Resources

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

## Reasons for Pre-Appeal Review

## Reasons for Request

The applicant in the above-identified case firmly believes the Examiner in the case has adhered to two common practices used by Examiners at the USPTO that make effective and efficient prosecution very difficult, force additional actions and responses to be made that would not be necessary if these practices were not followed, which places an additional burden on the applicant, the applicant's representative, and the USPTO in general, and results in Final rejections that cannot be supported as *prima facie*. These practices are:

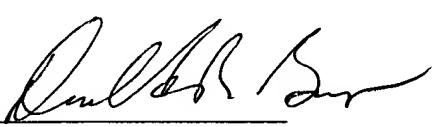
1. Stating a rejection by quoting the applicant's exact claim language, with references to column and line numbers in a reference, as though the reference actually mimics the claim language, which is never the case. Please refer to the action mailed 07/28/2005, page 2, part 3. The language of the reference is never the same, but the procedure, which is used so often by Examiner's that it must be taught and encouraged by senior Examiners and supervisors, allows the Examiner to avoid making any argument whatever as to why he or she believes the actual teaching of the reference, which is never stated, reads on the particular limitation of the claim. In addition, this Examiner, as do many Examiners, applies teachings of the reference with a broad brush. Refer to the limitation in applicant's claim of "...retrieving data associated with the selected incoming call..." (col. 1-6). So the Examiner applies three pages of the reference for this one limitation, and it is left to the applicant (and his agent, of course) to determine exactly what in all of these three pages of text the Examiner believes to teach the limitation. The Examiner never says, and if the applicant guesses wrong, the Examiner can wiggle away.
2. Applying a reference that deals with much the same problem as does the applicant's invention, but solves the problem in a different way. This is another technique that is used so often that it must be encouraged and taught by senior Examiners and supervisors.

A prima facie rejection requires that the actual limitations of applicant's claimed invention be taught by the reference, not just that the problem be solved. In this particular case the reference deals with a similar problem, but the reference teaches a different way of solving the problem than applicant's claimed invention.

In applicant's last response, filed 03/17/2005 the issues are clearly articulated relative to claim 1 (for example) beginning on page 8, last paragraph, through page 10. In this presentation in the last response the applicant makes it clear that no data is provided in any instance in Petrunka (US 6,122,364) until after a call connection is made, and Petrunka does not teach a telephone at the agent station to which calls are placed. And it is the sending of data associated with the call that is finessed with the six column reference.

Petrunka addresses much the same problem as does the applicant, but teaches a different invention.

Respectfully Submitted,  
Dan Kikinis et al.

by   
Donald R. Boys  
Reg. No. 35,074

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